

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOHN B. GESNER,

Plaintiff,

v.

MICHAEL J. ASTRUE,
COMMISSIONER SOCIAL
SECURITY ADMINISTRATION,

Defendant.

No. CV 06-1553-ST

OPINION & ORDER

MOSMAN, J.,

On November 9, 2007, Magistrate Judge Stewart issued Findings and Recommendation ("F&R") (#21) in the above-captioned case recommending the case be remanded for reconsideration of the opinion of Dr. Kuttner, as well as an appropriate drug and alcohol analysis. Mr. Gesner filed objections.

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The district court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. Where objections have been made, I conduct a *de novo* review. 28 U.S.C. § 636(b)(1)(C). However, I am not required to

review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge to which no objections are made. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). In either case, the court is free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Stewart's recommendation, and I ADOPT the F&R as my own opinion

IT IS SO ORDERED.

DATED this 24th day of January, 2008.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Court